

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

MIKE RAMOS,)	
)	
Petitioner,)	
)	
VS.)	Civil Action No: SA-10-CA-974-XR
)	
RICK THALER, DIRECTOR, TDCJ-CID,)	
)	
Respondent.)	

ORDER

On this date, the Court considered the United States Magistrate Judge's Report and Recommendation, filed April 25, 2011, in the above-numbered and styled case. Docket no. 18. The Magistrate Judge recommends denying Respondent's motion to dismiss. After due consideration, the Court accepts the Magistrate Judge's recommendation.

Any party who desires to object to a Magistrate Judge's findings and recommendations must serve and file his written objections within fourteen days after being served with a copy of the findings and recommendations. 28 U.S.C. § 636(b)(1). The Magistrate Judge's recommendation was issued on April 25, 2011. No objections have been filed. Because no party has objected to the Magistrate Judge's Memorandum and Recommendation, the Court need not conduct a *de novo* review. *See* 28 U.S.C. § 636(b)(1).

Respondent filed a motion to dismiss Ramos's 2254 habeas petition on the basis that it is barred by AEDPA's statute of limitations. On September 24, 2008, Ramos pled *nolo contendere* to an aggravated sexual assault charge. He appealed, and his appeal was dismissed by the Fourth Court of Appeals on January 21, 2009 due to the plea bargain. The Magistrate Judge noted that Ramos

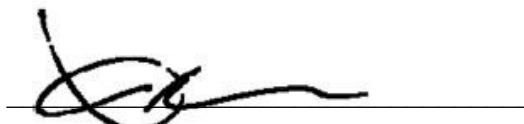
requested and was granted an extension of time until April 21, 2009 to file a petition for discretionary review with the Texas Court of Criminal Appeals, but did not file a petition. On October 21, 2009, Ramos filed a state habeas application, which was denied on July 28, 2010. Ramos filed this federal habeas petition on November 30, 2010.

In the motion, Respondent argues that the criminal judgment became final on February 20, 2009. However, the Magistrate Judge disagreed, finding that the judgment did not become final until the expiration of the time for seeking direct review, which was when the extension of time to file the PDR expired on April 21, 2009. The Magistrate Judge cited to *Dolan v. Dretke*, 168 Fed. App'x 10, 11 (5th Cir. 2006). In *Dolan*, the Fifth Circuit held that the time available for filing a PDR lapsed when the extension of time granted by the Texas Court of Criminal Appeals for filing a PDR expired, and the district court erred in finding that Dolan's conviction became final before that date.

Thus, the Magistrate Judge concluded, the limitations period began running on April 22, 2009, but stopped between October 21, 2009 and July 29, 2010, such that only 305 days of the limitations period had run when Ramos filed this habeas petition, making it timely.

Having reviewed the file, the Court finds that the Magistrate Judge's analysis and recommendation is neither erroneous nor contrary to law. Accordingly, the recommendation is accepted. Respondent Thaler's motion to dismiss (docket no. 16) is DENIED.

SIGNED this 16th day of May, 2011.



XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE